IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10864 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARESH MALSI MAHESHBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10864 of 2001

MS BHARTI RANA for MS SUBHADRA G PATEL for Petitioners No. 1-2

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 11.10.2001 passed by the District Magistrate, Kachchh - Bhuj and executed on 25.10.2001, in exercise of power under Section 3 of the PASA Act.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered four registered offences against the detenu. The detaining authority has also considered statements of four anonymous witnesses. The detaining authority observed that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds. The learned Advocate for the petitioner Ms. Bharti Rana for Ms. Subhadra Patel submitted that the order stands vitiated only on the ground that the satisfaction recorded by the detaining authority for urgent need for detention is not genuine. She submitted that so far as statements of anonymous witnesses are concerned, they are not verified by the detaining authority but they are verified by Dy. S.P. Anjar, Kutch.

3.1 The order is further assailed on the ground of delay in passing the order. She submitted that the last offence was registered on 29th March, 2001, whereas the order is passed on 10.11.2001. It is contended that if the satisfaction recorded by the authority for the need for exercise of power under Sec. 3 of the PASA Act was genuine, the authority would have acted immediately after verification. The satisfaction recorded by the authority therefore is only verbal and mechanical and this would affect the exercise of power under Sec. 3 of the PASA Act and ultimately the order of detention and therefore, the petition may be allowed.

4. Learned AGP Mr. S.S. Patel has opposed to this petition.

5. Having regard to the rival side contentions raised before this Court, it is clear that the authority has exercised powers under Sec. 9(2) of the PASA Act, in absence of any cogent material. No exercise is

undertaken to verify whether the fear expressed by the witnesses is genuine or imaginery. This improper exercise of powers of claiming privilege under Sec. 9(2) of the PASA Act has also affected the right of the detenu of making an effective representation.

The subjective satisfaction recorded by the detaining authority is not genuine. There is gross delay in passing the order. The last offence was registered against the petitioner on 29th March, 2001, whereas the order is passed on 11.10.2001 and the live-link between the activity of the petitioner and the order is snapped. The petition therefore, deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 11.10.2001 passed by the learned District Magistrate, Kutch-Bhuj is quashed and set aside. Detenu Naresh Malsi Maheshwari be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas